IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6786 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE A.M.KAPADIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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JAYESH MOHANBHAI PATEL

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 6786 of 2001

MR JK PARMAR for Petitioner No. 1

MR S.S.PATEL, AGPfor Respondent No. 1-3

CORAM : MR.JUSTICE A.M.KAPADIA

Date of decision: 25/09/2001

ORAL JUDGEMENT

In exercise of powers under Section 3(2) of the Gujarat Prevention of Anti Social Activities Act, 1985 ('the Act' for short), the Commissioner of Police Ahmedabad City, Ahmedabad vide order dated February 16, 2001 (Annexure-A to the petition) detained the petitioner/detenu.

2. The averments made in the petition and the

grounds of detention manifest that the detaining authority has considered the petitioner as a dangerous person within the meaning of Section 2(c) of the Act and 8 cases punishable under Chapter-17 of the IPC are registered against the petitioner which are either pending at investigation stage or pending trial and statements of two witnesses were recorded and therefore, according to the detaining authority the petitioner is a dangerous person and the alleged activities of the petitioner is prejudicial to the maintenance of the public order and therefore, powers under Section 9(2) of the Act were exercised by the detaining authority.

3. By filing this petition under Article 226 of the Constitution, the petitioner has assailed the impugned order of detention on various grounds and prayed to issue writ of habeas corpus or any other appropriate writ, order or direction quashing the impugned order of detention and setting him at liberty forthwith.

4. Though the petitioner has challenged the order of detention on various grounds, Mr. J.K.Parmar, learned advocate for the petitioner has restricted his arguments to the fact that subjective satisfaction recorded by the detaining authority to exercise powers under Section 9(2) of the Act cannot be considered as genuine. To bring home the aforesaid submission, reliance is placed on the statements of two witnesses which were recorded on February 12, 2001 and February 13, 2001 and verified by the detaining authority on February 15, 2001 and immediately thereafter on the next date i.e. on February 16, 2001, the detention order came to be passed. Besides this, the detaining authority has observed in the order of detention that the petitioner would indulge in similar activities after being released on bail and therefore, it has become necessary to detain him. Therefore subjective satisfaction recorded by the detaining authority cannot be considered as genuine as there was no enough material before the detaining authority to assume that the petitioner would definitely be enlarged on bail. Therefore, on the aforesaid two grounds, the impugned order of detention deserves to be quashed and set aside. It is further contended that the detaining authority has not applied his mind properly before passing the impugned order of detention and hence, the said order of detention is vitiated as the Commissioner of Police, Ahmedabad City, Ahmedabad has not recorded the subjective satisfaction before passing the impugned order. It is further stated that the detaining authority has not exercised powers under Section 9(2) of the Act properly and therefore order of detention deserves to be quashed

and set aside by setting the petitioner at liberty .

5. Mr. S.S.Patel, learned AGP appearing on behalf of the respondent State has opposed the petition by making his oral submissions. However, he does not dispute the factual aspect of date of recording and verification of the statements of witnesses. He also does not dispute the fact that the detaining authority has observed in its order that the petitioner would again indulge in similar activities after being released on bail. He, therefore, urged to pass appropriate order in light of the settled principles enunciated by this Court and the Supreme Court in this regard.

6. I have considered the submissions advanced by the learned advocates appearing for the parties. I have also perused the averments made in the petition as well as the documents annexed therewith and the impugned order.

7. A similar question arose in the case of KALIDAS C KAHAR VS. STATE 1993 (2) GLR 1659 in which proposal was made on October 16, 1992 and detention order was passed on October 17, 2992 and therefore it is held to be a wrong exercise of power under Section 9(2) which has adversely affected the detenu's right of making an effective representation as enshrined under Article 22(5) of the Constitution and therefore, the detention order was quashed.

8. A similar question arose before the Supreme Court in the case of ABDUL SATHAR IBRAHIM MANIK V. UNION OF INDIA - 1991 AIR SC 2261 in which it has been held that there must be enough material necessitating the detention of a person in custody. If there is possibility of his being released on bail and on being so released he is likely to indulge in prejudicial activities, then there must be compelling reasons to pass detention order.

9. A similar view is also expressed by the Supreme Court in the case of AMRITLAL V. UNION GOVERNMENT - 2000 AIR SCW 4203. In the said case it has been observed that there must be cogent material before the officer passing the detention order that the detenu is likely to be released on bail. The inference must be drawn from the available material on record and must not be the ipse dixit of the officer passing the order of detention. Likelihood of detenu's moving an application for bail is not a cogent material and detention order based on such material is liable to be quashed. The reasoning that there is "likelihood to be released on bail" is different from "likelihood of his moving an application for bail".

10. Applying the aforesaid principles laid down by the Supreme Court to the facts of the present case, in the instant case also the detaining authority has considered only the aspect of petitioner being released on bail and thereafter to indulge in similar activity, but on what basis the detaining authority has come to the conclusion that the petitioner would continue in indulging in similar activities is not mentioned in the order of detention. Therefore, order of detention stands vitiated and the petition deserves to be allowed on this ground alone.

11. For the foregoing reasons, the petition succeeds and accordingly it is allowed. The impugned order of detention dated February 16, 2001 (Annexure-A to the petition) is hereby quashed and set aside. The petitioner/detenu is ordered to be set at liberty forthwith if not required in connection with any other case. Rule is made absolute with no order as to costs. Direct service is permitted.

(A.M.Kapadia, J)

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